

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

CYNTHIA A. ROBINSON,
Plaintiff,
vs.
DONALD ENGEL,
Defendant.

NO. CV-07-273-EFS

ORDER DISMISSING ACTION WITH
PREJUDICE

1915 (g)

Before the Court, without oral argument, is Plaintiff's First Amended Complaint, filed January 24, 2008 (Ct. Rec. ____). Because Plaintiff failed to properly label her First Amended Complaint, the Clerk's Officer mistakenly opened it as a new action. By Order filed April 15, 2008, cause number CV-08-3007-EFS was consolidated into CV-07-273-EFS. After reviewing the First Amended Complaint, the Court finds it fails to cure the deficiencies contained in the initial complaint.

Plaintiff initiated this action while a prisoner at the Yakima County Jail. She contends she was innocent of unspecified charges for which she was convicted and sentenced on an unspecified date. She claims Defendant Donald Engel, a Yakima County Judge, wrongly imprisoned her in violation of her Fourth, Fifth and Fourteenth Amendment rights. She seeks monetary damages for false imprisonment. She also asks to have her criminal record expunged and to have Judge Engel's employment

1 terminated.

2 As Plaintiff was previously advised, judges are absolutely immune
3 for all judicial acts performed within their subject matter jurisdiction
4 when the plaintiff is seeking damages for a civil rights violation.
5 *Stump v. Sparkman*, 435 U.S. 349, 356 (1978); *Ashelman v. Pope*, 793 F.2d
6 1072, 1075 (9th Cir. 1986). An act is a "judicial" one when it is a
7 function normally performed by a judge and the parties dealt with the
8 judge in his judicial capacity. *Sparkman*, 435 U.S. at 362; *Crooks v.*
9 *Maynard*, 913 F.2d 699, 700 (9th Cir. 1990).

10 Absolute immunity exists even when there are charges that the judge
11 acted maliciously; it exists "however erroneous the act may have been,
12 and however injurious in its consequences it may have proved to the
13 plaintiff." *Bradley v. Fisher*, 80 U.S. 335, 347 (1871); *Pierson v. Ray*,
14 386 U.S. 547, 554 (1967) (judges should not have to "fear that
15 unsatisfied litigants may hound them with litigation charging malice or
16 corruption"). Here, Plaintiff indicates Judge Engel presided over a
17 criminal matter and issued a sentence.

18 Plaintiff dealt with Judge Engel in his judicial capacity. She
19 states no facts indicating Judge Engel acted in the "clear absence of
20 all jurisdiction." *Stump v. Sparkman*, 435 U.S. at 357. Although
21 granted the opportunity to do so, Plaintiff has not alleged any set of
22 facts which would lower the shield of absolute judicial immunity.

23 Accordingly, **IT IS ORDERED** that this action be **DISMISSED with**
24 **prejudice** for failure to state a claim upon which relief may be granted
25 under 28 U.S.C. §§ 1915(e) (2) and 1915A(b) (1) .

1 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner
2 who brings three or more civil actions or appeals which are dismissed as
3 frivolous or for failure to state a claim will be precluded from
4 bringing any other civil action or appeal *in forma pauperis* "unless the
5 prisoner is under imminent danger of serious physical injury." 28
6 U.S.C. § 1915(g). Plaintiff is advised to read the new statutory
7 provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's
8 complaint may count as one of the three dismissals allowed by 28 U.S.C.
9 § 1915(g) and may adversely affect his ability to file future claims.

10 **IT IS SO ORDERED.** The District Court Executive is directed to
11 enter this Order, forward a copy to Plaintiff at her last known address,
12 enter judgment, and close the file. The District Court Executive is
13 further directed to forward a copy of this Order to the Office of the
14 Attorney General of Washington, Criminal Justice Division.

15 **DATED** this 16th day of April 2008.

16
17 s/ Edward F. Shea
18 EDWARD F. SHEA
19 UNITED STATES DISTRICT JUDGE

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